

RICARDO LARA

INSURANCE COMMISSIONER

California Department of Insurance

Notes – Small Business Resources Virtual Town Hall

Friday, August 7, 2020

California businesses of all sizes are suffering great losses because of the COVID-19 pandemic. While we have encountered business interruption questions in the past following wildfires or other disasters, we have seen nothing on this scale – with thousands of businesses closed and drastically reducing payroll. It is imperative for you to have up to date information on services and resources for both issues. Insurance Commissioner Ricardo Lara and Assemblymember Adam Gray hosted the following experts at the small business virtual town hall on insurance issues and available resources for businesses:

- Rick Leibowitz, Center Director for the UC Merced Small Business Development Center and Assistant Director, Central California Small Business Development Center Regional Network
- Steve Keyzers, President, Key HR

Assemblymember Adam Gray

Thank you for being here today and joining this virtual town hall. I'd like to acknowledge and introduce Insurance Commissioner Ricardo Lara, Rick Leibowitz and Steve Keyzers.

Many of you have submitted questions prior to this town hall so those will be given priority. You can ask questions during this by using the chat feature. If we do not get to your question, we will follow afterward.

Insurance Commissioner Ricardo Lara

Thank you, Assemblymember Gray, I am happy to join you today as we discuss resources for businesses and give you and your constituents in the Central Valley an update on the work we have been doing on their behalf.

Since the Governor's "stay at home" order was issued in March, we have held over 30 tele-town halls focused on business issues like business interruption insurance and workers' comp -- and reached more than 7,000 businesses and consumers on COVID-19 related issues.

I ordered insurance companies to return a portion of premiums to businesses and drivers affected by the COVID-19 pandemic.

In response to my order, California automobile insurance companies have returned \$1.2 billion in savings to drivers.

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We are still reviewing the premium relief to businesses. I am proud to say that I am the only insurance commissioner in the country to expand this to our businesses.

For maximum transparency, I have posted every insurance company's report about their premium relief to the Department of Insurance website at insurance.ca.gov.

This builds on an action I took to request insurance companies give consumers a grace period to pay premiums.

Many insurance companies have honored that request by offering flexibility to consumers and businesses during the COVID-19 emergency.

Other actions I have taken to protect consumers and businesses include:

- Requiring insurance companies to comply with their contracts and California law by fairly investigating business interruption claims.
- Extending personal auto coverage for delivery drivers for California's essential businesses.
- Eliminating cost-sharing for COVID-19 testing.
- I joined with Covered California in urging uninsured Californians to obtain insurance to protect their health.
- I directed health insurance companies to submit emergency plans on prescriptions and health access- including increased telehealth access for consumers.
- I also took action so people with an expired license or registration can maintain their auto insurance and good driver discounts while access to the DMV is limited.

I encourage you to contact the Department at 800-927-4357 or visit our website at insurance.ca.gov if you have any questions in regards to any of these measures or if you want one of our experts to help review your insurance coverage.

I want to urge all businesses to be on the lookout for fraud and insurance scams – unfortunately during these times is when you see businesses targeted for fraud.

If you see any red flags or suspicious activity, please report it to the Department of Insurance.

We have 300 sworn investigators and enforcement personnel, with 9 regional offices – including an office in Fresno, serving the Central Valley.

I would also tell businesses to be on the alert for those offering bogus workers' compensation policies.

Verify the legitimacy of the selling agent and the policy offered. Verify the agent's license on our website and contact their insurance company directly to verify the policy.

And report any issues to my Department at 800-927-4357.

While a majority of our staff are teleworking in support of the Governor's "stay at home" directives, we continue to provide essential services for California consumers and we are available via phone at 1-800-927-4357 and through our website – insurance.ca.gov -- to assist you with your claims.

Insurance can be complicated. We can help you and guide you through this process.

We have insurance experts ready to help and answer your questions in multiple languages.

You can talk to an actual person – not just a recording.

I look forward to answering your questions.

Rick Leibowitz

I am with the Central California Small Business Development Center Regional Network. We are funded by the U.S. Small Business Administration. Anything I share today reflects my opinions – not those of the U.S. Small Business Administration.

The core of our services is one on one counseling with diverse areas of expertise. We are here to help your business – business training, market research, we are educators that work with your business needs. Our support now is relevant to the needs of the economy – loan packaging assistance. The Payroll Protection Program (PPP) is a forgivable loan program. We can help you put together your loan package for this. We can help you with budgeting in a crisis environment. I was a small business owner during 9/11 and have experience. We are also good at helping you with pivot strategies and with new opportunities. Never give up on making yourself stand out! Another thing we can help with is resources – the PPP is sun setting but we are waiting on Congress to come up with the next aid program. The Economic Injury Disaster Loan program is still out there – you really do want to go forward with a well prepared application. All new resources will be posted here: www.Centralsbdc.com

Steve Keyzers

I am a human resources consultant with the SBDC. I will discuss human resource issues employers are facing during COVID-19:

1. What if someone does not want to return to work and they have no symptoms? There are no relief packages that provide benefits to them. As the employer, you have no legal requirements to accommodate them.
2. What if someone's family member tests positive? When that happens, we know the employee has been exposed so the employer has an obligation to provide a safe space so the employer could say to wait 14 days or have a test and show the employer the results.
3. What qualifies for the Families First Coronavirus Recovery Act? We have the requirement to provide up to 80 hours of sick leave in exchange for a payroll tax credit at a later time. Under the Act, there are six reasons why an employee would be qualified for this sick leave: 1) if the employee is subject to federal, state or local isolation or a quarantine order; 2) employee is

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advised by a health care provider to self-quarantine; 3) experiencing symptoms of coronavirus and seeking medical diagnosis; 4) employee is caring for an individual subject to an order as described above; 5) child care issues; 6) if an employee is experiencing another substantially similar condition specified by the HHS Secretary.

4. What do you do if an employee tests positive? Notify all employees. Encourage all to get tested and follow protocols provided by the CDC. You should not provide names of employee who tested positive.
5. When can someone return to work after testing positive? 1) wait 14 days after positive test; 2) they can provide a negative test result; 3) doctor's release to return to work.

Assemblymember Gray

At this time, we are moving to the question and answer period. We received a series beforehand and then please use the chat room for additional questions.

Questions

Question 1: I paid my insurance and understood it included business interruption coverage, why isn't loss of business due to the COVID-19 pandemic covered?

Commissioner: The first thing people need to know is that not all policies are the same.

We would need to look at the specific policy to better understand what coverages and exclusions a policyholder has.

If a business has Business Interruption coverage, but their insurance company is telling them that these losses are not covered due to exclusions in their policy, we recommend that you file a formal claim with their insurance company and start creating that paper trail.

Insurance companies are legally required to fairly investigate a claim and formally respond back with their coverage decision and the reason for any denials they may make.

While it is more complicated than this, many commercial policies have exclusions for loss due to contamination by virus and similar perils.

Many policies also require that a loss be caused by direct physical damage or loss to the insured property that results from a cause covered by the policy. These conditions and exclusions do create hurdles to obtaining coverage.

However, we would need to see the entire policy as well as the circumstances applicable to the loss event to know what conditions or exclusion may or may not exist for a particular business.

If a business has not filed a formal claim, it should do so immediately. If the business has filed a formal claim and that claim has been denied, we recommend they file a "Request for Assistance" with

my Department by calling us at (800) 927-4357 or through our website at: www.insurance.ca.gov.

While it is true that many commercial policies have provisions that may exclude coverage for business interruption under the circumstances, my Department will review the claim to ensure that the insurer is properly investigating your claim and following all laws and the provisions in the contract.

Question 2: I purchased a business in October of last year. Our projections at the time had us profitable in June 2020 but with COVID our business is off. I have been funding operations out of my own pocket; however, given the time it is going to make profitability – I am looking for a working capital loan. What options are available?

Rick Leibowitz: This should be discussed in a one-on-one environment because every situation is different. The EIDL loan would be in your best interest in terms of interest rates and payback terms so we certainly do not want to give up on that. Other options would involve personal financial review and finding the right lender.

Question 3: Do I have to pay my full premium when I have been closed for 1/3 of the year?

Commissioner: This is why we mandated insurance companies to return premium to folks that no longer reflect the risk for that premium. If you have not received a refund or credit, give us a call. It will be a partial refund for March, April, May and June.

Question 4: Can workers' comp insurance companies exclude COVID-19 from their coverage, whether or not they are considered essential businesses?

Commissioner: Workers' compensation insurers cannot exclude COVID-19 from their coverage.

All workers affected by COVID-19 on the job are eligible for workers' compensation benefits – whether or not they are considered essential services.

This includes workers engaged in front-line occupations such as health care, emergency services, food production, sales, and delivery, among others.

Workers' compensation also applies to undocumented workers. In 2015, when I was in the California State Senate, I authored SB 623, which was signed by Governor Brown, that expanded protections for undocumented workers in the event they are injured on the job, even if their employer does not carry workers' compensation insurance as required by law.

I issued a notice to insurance companies on April 6 to remind insurance companies about these existing legal protections for undocumented workers.

Governor Gavin Newsom signed an executive order creating a presumption that a worker contracted COVID-19 while on the job if the worker is diagnosed with COVID-19 or tests positive within 14 days of performing a labor or service at a place of work.

The order applies to all workers, whether or not they are deemed "essential."

But I have to say for our business owners, this is a rebuttable presumption, meaning that employers will have a chance to prove that the illness is not work-related.

Businesses that are closed or have drastically reduced payrolls due to stay at home orders may see their workers' compensation insurance costs reduced in the short term.

That is why I ordered insurance companies to return a portion of workers' compensation premiums to businesses.

I issued emergency workers' compensation regulations to make changes to reflect the lower risk of worker injuries in light of the pandemic.

These new regulations will mandate insurance companies to recompute premium charges for policyholders to reflect reduced risk of loss consistent with my Bulletins, and will result in savings for many policyholders as businesses.

Alec Stone: Under these emergency regulations, employers are permitted to reclassify an employee if the employee's duties have changed to a clerical classification, reflecting that employee's lower risk of injury when compared to the employee's previous classification. This reclassification will reduce the employer's premiums for employees who are a lower risk because they are now working from home even though they may not have previously done so.

This change would be retroactive to March 19, 2020, the first day of the Governor's statewide stay-at-home order and conclude 60 days after the order is lifted.

These emergency regulations also will lower premiums for some employers by excluding from premium calculations the payments made to an employee, including sick or family leave, while the employee is not performing duties of any kind for the employer.

Typically, these payments would be used as a basis for the employer's workers' compensation premium. This change will lower the employer's rate by reducing the amount of payroll assessed, and the employer will not pay premium for paid workers who are otherwise being furloughed.

This new regulation also excludes claims related to a COVID-19 diagnosis from being included in future rate calculations so that employers are not penalized with higher rates due to COVID-19 claims.

I have also adopted rules that will permit my statistical agent to collect COVID-19 related claims data so that I can continue to monitor the overall effect of this pandemic on the workers' compensation market.

Question 5: We also received a lot of questions from small business owners about liability due to COVID-19 exposure. How can businesses deal with these liability issues?

Steve Keyzers: Workers' compensation is a no-fault system. To avoid liability from a vendor or a customer, follow strict protocols put out by the CDC.

Commissioner: Even when you reopen, businesses are going to need time to recover. And, I know liability due to COVID exposure is a legitimate concern.

The Department of Insurance is going to be watching closely to make sure that insurance companies are giving you as much flexibility as possible and that they are fully abiding by their contracts.

I understand the burdens being placed on businesses as they attempt to reopen while still keeping their employees and customers safe. It is not an understatement to say that lives are at stake here.

Businesses should follow the Governor's Resiliency Roadmap, as well as local guidelines, for what processes the business must follow, and that will go a long way towards helping California lead the way through this pandemic.

As businesses reopen, they should have a conversation with their agent or insurance company to get guidance regarding how to safely return to business and also to make sure businesses have the right coverage in place.

If you need an expert from the department to help you decipher your coverage or you're not satisfied with the answers you're getting from your agent/broker, please contact our Department at 800-927-4357.

As I discussed earlier, workers are specifically covered if they contract COVID-19 while on the job.

Question 6: What are my options if I do not have coverage for business losses due to the COVID-19 virus?

Commissioner: If you truly do not have any Business Interruption coverage, you should look at the various federal, state, and local programs available through the SBA and other sources.

However, if you have a commercial policy, but your insurance company is telling you that you don't have Business Interruption coverage, or that there is no coverage when losses are caused by a virus, we recommend that you file a formal claim with your insurance company. As I mentioned before, insurance companies are legally required to fairly investigate your claim and formally respond back to you with their coverage decision and the reason for any denials they may make. The Department of Insurance can also walk you through your policy to make sure what the insurance company is telling you is accurate.

Question 7. I have a couple of friends that want to start a small business that helps people recover from this virus' economic impact by starting a business that helps individuals repair their credit. Do they feel a credit repair business would be helpful during and after the pandemic?

Rick Leibowitz: I just moved here from Oregon so I am more familiar with their legislation than that in California. I do not know what is in the works either nationally or in CA. There has always been a need for credit repair pre-COVID. I think it is a very much needed service.

As you look out for resources, be cautious about fraud by exploring programs. You should not have to pay an application fee, etc.

Insurance Commissioner Ricardo Lara

Thank you for this opportunity and if you have any questions please call us at 800-927-4357 or via our website at www.insurance.ca.gov.

During this fire season, also please look at your homeowners' policy, look at your coverages and exclusions. Better to prepare before a disaster happens.

Additional Resources

Request Assistance from the California Department of Insurance:

- <https://www.insurance.ca.gov/>
- PH: 800-927-4357

Assemblymember Adam Gray

- District Office: 209-726-5465

U.S. Small Business Administration

- www.sba.gov

Central CA SBDC Regional Network

- <https://centralcasbdc.com/>

Key HR

- <https://www.key-hr.com/team>

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